Office-Supreme Court, U.S.
FILED
JUL 7 1981
ALEXANDER L. STEVAS,
CLERK

No. 89

No. , Original

# In the Supreme Court

OF THE

# United States

OCTOBER TERM 1980

STATE OF CALIFORNIA, ex rel.
STATE LANDS COMMISSION,
*Plaintiff,*

vs.

UNITED STATES OF AMERICA,
*Defendant.*

## MOTION FOR LEAVE TO FILE COMPLAINT IN ORIGINAL ACTION; STATEMENT IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT; COMPLAINT

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## SUBJECT INDEX


| | Page |
|---|---|
| Motion for leave to file complaint in original action | 1 |
| Statement in support of motion for leave to file complaint | 2 |
| I. Introduction; summary of argument | 2 |
| II. Jurisdiction | 4 |
| III. Background | 5 |
| IV. Facts | 6 |
| V. Only the Supreme Court can prevent the attempt by the United States to resurrect the *Bonelli/Hughes* "rule" that would apply federal law to cause defeasance of state sovereign land title in complete disregard of the plain mandate of *Corvallis* and basic state sovereign rights—the right of a State to have title to its sovereign lands determined pursuant to state law | 13 |
| A. The controversy is legal, not factual | 14 |
| B. This case presents apposite facts to make explicit the demise of *Hughes* and prevent continued attempts to cause defeasance of state sovereign titles by operation of federal common law doctrines | 15 |
| C. In a case where the essential sovereignty of the States vis-a-vis the United States is concerned, the Supreme Court is the only forum to determine the choice-of-law | 19 |
| 1. This case is about the essential sovereignty of the States | 19 |

SUBJECT INDEX

Page

2. As the essential sovereignty of the States is concerned when the United States through assertion of doctrines of "federal common law," seeks to cause defeasance of state sovereign land title, the Supreme Court is the only forum to determine whether there is any overriding federal interest that could ever require displacement of state law and application of federal law to determine title to such state sovereign lands ..... 23

Conclusion ..... 26

Complaint ..... 27

Exhibit A ..... A-1

Exhibit B

## TABLE OF AUTHORITIES CITED

### Cases

Page

Arkansas v. Tennessee, 246 U.S. 158 (1918) ..... 17
Beaver v. United States, 350 F.2d 4 (9th Cir. 1965) .... 12
Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973) .....
.....12, 14, 17, 20, 23, 26
Borax, Ltd. v. Los Angeles, 296 U.S. 10 (1935).....5, 6, 17, 18
California v. Arizona, 440 U.S. 59 (1979) ..... 4, 5
Carpenter v. City of Santa Monica, 63 Cal.App.2d 772
(1944) ..... 13
City of Los Angeles v. Anderson, 206 Cal. 662 (1929) 13
Clearfield Trust Co. v. United States, 318 U.S. 363
(1943) ..... 24
Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) ..... 21
Hardin v. Jordan, 140 U.S. 371 (1891) ..... 7
Hughes v. Washington, 389 U.S. 290 (1967) .....
.....12, 14, 16, 17, 19, 20, 26
Joy v. St. Louis, 201 U.S. 332, 342-343 (1906) ..... 17
Minnesota v. Hitchcock, 185 U.S. 373 (1902) ..... 4
Mississippi v. Arkansas, 415 U.S. 289 (1974) ..... 14
Mitchell v. Smale, 140 U.S. 406 (1891) ..... 7
Montana v. United States, 101 S.Ct. 1245 (1981) .....
.....16, 18, 20, 22
Ohio v. Wyandotte Chemicals Corp., 401 U.S. 493
(1971) ..... 14
Packer v. Bird, 137 U.S. 661 (1891) ..... 5, 7
People v. California Fish Company, 166 Cal. 576 (1913)
..... 7
Pollard's Lessee v. Hagan, 3 How. 212 (1845)....5, 17, 18, 25

## Table of Authorities Cited

### Cases

Page

Shively v. Bowlby, 152 U.S. 1 (1894) ..... 5
State Land Board v. Corvallis Sand and Gravel Co., 429 U.S. 363 (1977).....6, 13, 16, 17, 18, 19, 20, 22, 23, 24, 26
Swift v. Tyson, 16 Pet. 1 (1842) ..... 21
United States v. Alaska, 422 U.S. 184 (1975) .....3, 14, 15
United States v. Kimbell Foods, Inc., 440 U.S. 715 (1979) ..... 24
United States v. Oklahoma Gas Co., 318 U.S. 206 (1943) 20
United States v. Standard Oil Co., 332 U.S. 301 (1947) 24
United States v. State of California, 328 F.2d 729 (9th Cir. 1964) ..... 15
United States v. California, 381 U.S. 139 (1965) .....5, 22
United States v. Texas, 143 U.S. 621 (1892) ..... 4
Weber v. Harbor Commissioner, 18 Wall. 57 (1873)..... 5
Wilson, et al. v. Omaha Indian Tribe, et al., 442 U.S. 653 (1979) .....16, 20, 24, 25

### Constitution

United States Constitution:
Article III, Section 2 ..... 1, 4
Article III, Section 2, Clause 2 ..... 3
Tenth Amendment .....2, 21

### Rule

Federal Rules of Evidence, Rule 201(d) .....7, 8, 9, 11, 12

## Table of Authorities Cited

### Statutes


| | Page |
|---|---|
| California Public Resources Code: | |
| Section 6103 | 4 |
| Section 6103.2 | 4 |
| Section 6210 | 4 |
| Section 6216 | 4 |
| Section 6301 | 4 |
| 28 U.S.C.: | |
| Section 1251(b) | 1, 4 |
| Section 1346(f) | 4 |
| Section 2409a | 4 |
| Submerged Lands Act, Act of May 22, 1953 (Title II, § 3, 67 Stat. 30, 43 U.S.C. section 1311) | 5, 17, 21 |


### Other Authorities


| | |
|---|---|
| U.S. Army Corps of Engineers, San Francisco District, Survey Report on Humboldt Bay, California, Appendix I, "Shoreline Changes" (February 10, 1950) | 8, 9, 10 |
| Chief of Engineers, "Entrance to Humboldt Harbor, California," H.R. Doc. 950, 60th Cong., 1st Sess. (1908) | 8 |

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STATE OF CALIFORNIA, ex rel.
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vs.

UNITED STATES OF AMERICA,
*Defendant.*

## MOTION FOR LEAVE TO FILE COMPLAINT IN ORIGINAL ACTION

The State of California, appearing by its Attorney General, George Deukmejian, respectfully requests leave of the Court to file the Complaint submitted herewith against the United States of America, defendant. The State of California brings this suit under the authority of Article III, section 2 of the Constitution of the United States and 28 U.S.C. section 1251(b).

Respectfully submitted,

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STATE OF CALIFORNIA, ex rel.
STATE LANDS COMMISSION,
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## STATEMENT IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

### I

### INTRODUCTION; SUMMARY OF ARGUMENT

This case bears directly upon fundamental State's rights—state sovereign land title and the power of a State to apply its own non-discriminatory laws to determine the title to and the boundaries of land within its borders, especially its sovereign lands. These attributes of sovereignty, basic to the federal system, are constitutionally founded in the Tenth Amendment and the Equal-Footing Doctrine, long recognized by the Supreme Court and confirmed by statute.

This case presents no factual contest. It arises because the United States, relying on principles of federal, not state, law, asserts title to land which was indisputably part of the bed of the Pacific Ocean when California was admitted to the Union and plainly belonged to California as part

of its sovereign land heritage. Refusing to honor essential constitutional, statutory and court ratified precepts which require title to such sovereign lands to be determined under state law principles, the United States seeks now to remake the fundamental fabric of federalism and cause a defeasance of state sovereign land title by operation of doctrines of federal law.

This case presents a question wholly legal in character, the applicable choice of law, and warrants original jurisdiction in the Supreme Court. First, before any fact finder can decide this case, the Supreme Court must resolve a claimed conflict in its rulings and determine the applicable choice-of-law. For this reason, California should not be remitted to the tortuous, protracted process of trial and appeal through the federal court system. Second, this Court has instructed that coastal boundary cases such as this should most appropriately be brought as original actions pursuant to Article III, section 2, clause 2 of the Constitution. *United States v. Alaska*, 422 U.S. 184, 186, fn. 2 (1975). Finally, in this conflict between the federal and state sovereigns about the fundamental distribution and exercise of sovereign power, only the Supreme Court can finally ensure that the United States will honor its constitutional and statutory obligations and follow court ratified principles that require the United States to base its boundary and land title claims on state, not federal, law.

Efficient application of governmental and judicial resources, absence of any factual dispute and avoidance of the prolonged process of trial and appeal through the federal court system concerning an issue which ultimately can be decided only by the Supreme Court compel the conclusion that California's Motion for Leave to File Complaint in Original Action should be granted.

## II

## JURISDICTION

California[1] brings this action against the United States under authority of Article III, section 2 of the Constitution and 28 U.S.C. section 1251(b). The Supreme Court has jurisdiction over suits in equity to determine the boundary between State and federal lands. See *United States v. Texas*, 143 U.S. 621 (1892); *Minnesota v. Hitchcock*, 185 U.S. 373 (1902).

The United States has consented to be sued in civil actions to ". . . adjudicate a disputed title to real property in which the United States claims an interest. . . ." 28 U.S.C. section 2409a(a). The United States' claim of fee title to the contested land falls within this waiver of sovereign immunity.

The Constitution provides for Supreme Court original jurisdiction of suits between the United States and a State. U.S. Const., Art. III, section 2. Although such original jurisdiction is held to be concurrent with jurisdiction of such suits in the lower federal courts, *California v. Arizona*, 440 U.S. 59, 65 (1979); 28 U.S.C. section 1346(f),[2]

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[1]The California State Lands Commission ("Commission") is an administrative agency of the State of California authorized to represent the State of California in all contests between the State of California and the United States in relation to public lands. Cal.Pub.Res. Code sections 6103, 6103.2 and 6210. The Commission is vested with exclusive jurisdiction and authority to administer all public lands, including sovereign tide or submerged lands, owned by the State of California. Cal.Pub.Res. Code sections 6216 and 6301.

[2]Section 1346(f), ". . . by vesting 'exclusive original jurisdiction' of quiet-title actions against the United States in the federal district courts, did no more than assure that such jurisdiction was not conferred upon the courts of any State." *California v. Arizona, supra*, 440 U.S. at 68.

district court jurisdiction does not supplant Supreme Court original jurisdiction and this suit against the United States is properly maintained by California in the Supreme Court. *California v. Arizona, supra,* 440 U.S. at 66-67, 68.

As will be seen, this controversy, wholly legal in character, has been engendered by the dogged refusal of the United States to honor its constitutional and statutory obligations or to follow long recognized and recently reiterated Supreme Court precedent requiring the United States to base its boundary and land title claims on state, not federal, law.

## III

## BACKGROUND

The State of California, upon admission to the Union, became vested with sovereign title to all lands within its boundaries below the ordinary high-water mark of tidal or navigable waters. *E.g., Pollard's Lessee v. Hagan,* 3 How. 212, 223, 230 (1845); *Weber v. Harbor Commissioners,* 18 Wall. 57, 65-66 (1873); *Packer v. Bird,* 137 U.S. 661, 666 (1891); *Shively v. Bowlby,* 152 U.S. 1, 57 (1894). California acquired these sovereign lands on an "equal footing" with the Original States. *Ibid.*; *Borax, Ltd. v. Los Angeles,* 296 U.S. 10, 15, 22 (1935). The United States had no claim of title to sovereign lands within the 13 Original States nor to sovereign lands within the States created from the territories acquired as the United States continued on its manifest destiny. *E.g., Shively, supra,* 152 U.S. at 57 (1894). In other than the 13 Original States, the United States held title to these sovereign lands only ". . . for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territor[ies]." *Ibid.* Congress confirmed California's title to these sovereign lands in the Submerged Lands Act. Submerged Lands Act, Act of May 22, 1953, Title II, § 3, 67 Stat. 30, 43 U.S.C. section 1311; *United States v. California,* 381 U.S. 139, 145-146 (1965).

Thus, upon California's admission to the Union on September 9, 1850, California's title to sovereign lands within her borders vis-a-vis the United States was ". . . absolute so far as any federal principle of land titles [was] concerned . . .", *State Land Board v. Corvallis Sand and Gravel Co.*, 429 U.S. 363, 374 (1977) ("Corvallis"), and ". . . complete . . . [,] no power of disposition remain[ing] with the United States." *Borax, Ltd., supra*, 296 U.S. at 19.

## IV
## FACTS

This case concerns the title to and the boundaries of land located immediately north of the entrance channel to Humboldt Bay, California. In 1854, this land lay seaward of the ordinary high-water mark and was part of the bed of the Pacific Ocean.

No factual dispute exists as to the events which have culminated in this litigation.

The entrance channel to Humboldt Bay from the Pacific Ocean passes between two low sandy peninsulas known as the North Spit and the South Spit. The North Spit, located in both Township 5 North, Range 1 West and Township 4 North, Range 1 West, Humboldt Base and Meridian[3] was surveyed in 1854 by the United States. Township plats were prepared by the United States showing the extent and location of the public lands in these townships. United States Township Plat, T4N, R1W, H.B.M.; United States Township Plat, T5N, R1W, H.B.M.[4] The seaward boun-

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[3]The following abbreviations will be used hereinafter: Township ("T"); Range ("R"); North ("N"); West ("W"); and Humboldt Base and Meridian ("H.B.M.").

[4]Certified copies of these plats are lodged herewith as Exhibit A to the "Exhibits in Support of California's Motion for Leave to File Complaint; Matters of Which Judicial Notice is Requested," here-

dary of both townships was surveyed and closely approximated by the United States as the official meander line[5] of the ordinary highwater mark of the Pacific Ocean, the seaward extent of the public lands of the United States. See, *e.g., Packer, supra*, 137 U.S. at 671-672.

In 1854, the United States township surveys which included the North Spit established that the land that is the subject of this litigation ("subject land") was located seaward of the official United States meander line of the ordinary high-water mark of the Pacific Ocean.[6] Thus, official United States surveys contemporaneous with the admission of California into the Union demonstrate that the subject land was part of the bed of the Pacific Ocean and the sovereign lands of California, owned in fee and held in trust for the people of California. *Supra*, pp. 5-6; see *People v. California Fish Company*, 166 Cal. 576, 584 (1913). The subject land has never been conveyed by California.[7]

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inafter referred to as "Exhibits in Support of Motion." Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit A as containing facts not subject to reasonable dispute.

[5]A meander line runs along the margin of a water course. It is run for the purpose of ascertaining the quantity of public lands bordered by such watercourse and is accomplished to obtain an average result because of the difficulty in following the sinuosities of a water line. The actual boundary is the watercourse. *Hardin v. Jordan*, 140 U.S. 371, 380 (1891); *Mitchell v. Smale*, 140 U.S. 406, 413 (1891).

[6]Exhibit A to the Exhibits in Support of Motion; Complaint, Exhibit B.

[7]Affidavit of Gerald C. Smith, Custodian of Public Records, lodged herewith as Exhibit B to the Exhibits in Support of Motion. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit B as containing facts not subject to reasonable dispute.

By secretarial orders of 1859 and 1871, certain of the public lands of the United States on the North Spit described in the township plats were reserved from public sale. Secretarial Order, December 27, 1859 (reserving fractional section 6, T4N, R1W, H.B.M.); Secretarial Order, August 19, 1871 (reserving lots 3 and 4, section 31, T5N, R1W, H.B.M.)[8] The lands reserved by the United States on the North Spit are collectively referred to herein as the "Coast Guard Site."

The Pacific Ocean shoreline along the Coast Guard Site remained substantially unchanged from 1854 until the United States began construction of jetties[9] at the entrance

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[8]Certified copies of these Secretarial Orders are lodged herewith as Exhibit C to the Exhibits in Support of Motion. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit C as containing facts not subject to reasonable dispute.

[9]A detailed report chronicalling the construction activities at the entrance to Humboldt Bay and the progressive mutations of the Pacific Ocean shoreline boundary of the North Spit is found in *U.S. Army Corps of Engineers, San Francisco District, Survey Report on Humboldt Bay, California,* Appendix I, "Shoreline Changes" (February 10, 1950) lodged herewith as Exhibit D to the Exhibits in Support of Motion (hereinafter "Corps Report"). This report summarizes earlier reports made to Congress by the Chief of Engineers, U.S. Army: Report of the Chief of Engineers, U.S. Army 1890-1891, Appendix VV, "Improvement of Humboldt Harbor and Bay, California," p. 3120 *et seq.* ("COE 1891 Report"); Report of the Chief of Engineers, U.S. Army 1892-1893, Appendix UU, "Improvement of Humboldt Harbor and Bay, California," p. 3278 et seq. ("COE 1892 Report"); Chief of Engineers, "Entrance to Humboldt Harbor, California," H.R. Doc. No. 950, 60th Cong., 1st Sess. (1908) ("COE 1908 Report"); Chief of Engineers, "Humboldt Harbor and Bay, Calif.," H.R. Doc. 755, 69th Cong., 2d Sess. (1927) ("COE 1927 Report"); Chief of Engineers, "Humboldt Harbor and Bay, Calif.," H.R. Doc. No. 14, 74th Cong., 1st Sess. (1934) ("COE 1934 Report"); and Chief of Engineers, "Humboldt Bay and Harbor, Calif.," H.R. Doc. No. 11, 75th Cong., 1st Sess. (1936)

to Humboldt Bay.[10] Construction of the jetties commenced on the South and North Spit in 1889 and 1891 respectively.[11] Prior to construction of the jetties, a sandy shoal area had existed along the seaward side of both of the Spits.[12] During the construction period, the shoal area disappeared, as jetty construction interrupted the natural littoral sand transport.[13] Upon completion, the north jetty was a massive work:

> ". . . [having] a total length, including bank protection of 7,500 feet. The crest sloped gradually from 10 to 3 feet above low water for 7,000 feet, and thence gradually to bottom. The crest width was 10 feet and side slopes averaging 2 to 1. . . . The North jetty was not built to full height over its whole length."[14]

The Corps Report concluded that the significant seaward shift of the Pacific Ocean shoreline in the vicinity of the

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("COE 1936 Report"). Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of those portions of the Corps Report hereinafter cited as containing facts not subject to reasonable dispute. Such facts are generally known within the Northern District of California and are capable of accurate and ready determination by resort to the United States Army Corps of Engineers and published Congressional reports, sources whose accuracy, in this instance, cannot reasonably be questioned.

[10]Exhibit D, Corps Report, para. 9, p. 4.

[11]*Id.* at para. 5, p. 2; para. 6, p. 3; para. 21, p. 8; para. 25, p. 9.

[12]*Id.* at para. 5, p. 2.

[13]*Id.* at para. 6, p. 3; para. 21, p.8.

[14]COE 1908 Report, pp. 7-8. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of such portion of COE 1908 Report as containing facts not subject to reasonable dispute. Such facts are generally known within the Northern District of California and are capable of accurate and ready determination by resort to the U.S. Army Corps of Engineers, a source whose accuracy, in this instance, cannot reasonably be questioned.

jetties was caused by the construction of these massive works:[15]

> "With the inauguration of jetty construction in 1890, there began a series of interruptions in normal littoral transport. With each increment in length of the jetties the [Humboldt] bar was pushed seaward. Consequent decrease in offshore depths caused the shore to advance on each side of the inlet . . . Greater advance of the north shore as compared with the south illustrates the effect of dominance of down coast drift during these periods when the jetties were functioning as littoral barriers."[16]

> ". . . [T]he history of shore-line changes prior to jetty construction indicates that the ocean high-water shoreline in the vicinity of Humboldt Bay was geologically stable."[17]

After jetty construction,

> ". . . the Humboldt bar . . . shifted and reformed seaward of its 1870 position, and the ocean high-water shore line along the north spit . . . shifted seaward. The seaward advance of the north spit shore line was most pronounced upon reconstruction of the north jetty in 1917."[18]

Thus, the change in the location of the ordinary high-water mark at the Coast Guard Site resulted from the artificial seaward shift of the shoreline caused by construction of the jetties by the United States.[19] Natural littoral sand transport in this area would not have caused a build-up of

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[15]Exhibit D, Corps Report, *supra*, at paras. 8-16, pp. 3-6.

[16]*Id.* at para. 21, p. 8.

[17]*Id.* at para. 24, p. 9.

[18]*Id.* at para. 25, p. 9.

[19]*Id.* at paras. 8-16, pp. 3-6; para. 21, p. 8; para. 25, pp. 9-10.

the shoreline absent construction of the jetties.[20] It is evident from the Corps Report that no controversy exists between the United States and California about the cause of the movement of the boundary; the jetty caused the movement.[21]

Further, as late as December 1977, the United States recognized California's ownership of the subject land. The United States Coast Guard applied for permission from California to use the subject land to construct a watchtower.[22] The Application and the Environmental Information attached to the Application admit that the site for construction of the watchtower was "[l]ands artificially accreted to Section 6, T4N, R1W"[23] that had been ". . . formed as a result of the North Jetty acting as a barrier to down coast littoral sand movement."[24]

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[20]*Ibid.*

[21]Exhibit B to the Complaint depicts, for illustrative purposes, the present topography of the area in the vicinity of the entrance channel to Humboldt Bay and the location of the Coast Guard Site and the subject land.

[22]Letter, December 21, 1977, A.C. Wagner, Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District, to State Lands Commission, attached to which was Application For Permit or Lease of State Lands ("Application") by the United States executed by Vice Admiral Wagner. A certified copy of this letter and the Application is lodged herewith as Exhibit E to the Exhibits in Support of Motion. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit E as containing facts not subject to reasonable dispute.

[23]Exhibit E, Application, p. 1, para. B.

[24]*Id.*, Application, Environmental Information, U.S. Coast Guard Environmental Assessment, Proposed Construction of Humboldt Bay Coast Guard Station Watchtower (October, 1977), p. (2), para. B.

Based on this application California transmitted a permit for the Coast Guard's execution.[25] In order to expedite the permit process, the permit provided it was without prejudice to either the United States' or California's claim of ownership to any of the subject land.[26] Only after the filing of the application and California's good faith attempt to comply with the United States' request for an expedited permit procedure was California first advised that the United States would dispute the location of the boundary of the Coast Guard Site.[27] Even so, California again attempted to resolve this dispute amicably,[28] but was rebuffed by the United States.[29] California was advised by the United

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[25]Letter, May 19, 1978, James de la Cruz, Land Agent, to U.S. Dept. of Trans., 12th Coast Guard Dist., and attached permit form ("permit"). A certified copy of this letter and permit is lodged herewith as Exhibit F to the Exhibits in Support of Motion. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit F as containing facts not subject to reasonable dispute.

[26]Exhibit F, Permit, p. 3, para. 1.

[27]Letter, July 17, 1978, William F. Northrop, Executive Officer, States Lands Commission, to Ed Hastey, State Director, Bureau of Land Management. A certified copy of the letter and attachments thereto is lodged herewith as Exhibit G to the Exhibits in Support of Motion. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit G as containing facts not subject to reasonable dispute.

[28]*Ibid.*

[29]Letter, July 27, 1978, Ed Hastey, State Director, Bureau of Land Management, to William F. Northrop, Executive Officer, State Lands Commission. A certified copy of this letter is lodged herewith as Exhibit H to the Exhibits in Support of Motion. Pursuant to Federal Rule of Evidence 201(d), the Supreme Court is requested to take judicial notice of Exhibit H as containing facts not subject to reasonable dispute.

States Bureau of Land Management that the United States would dispute California's ownership of the subject land based on the "rule" of *Hughes v. Washington*, 389 U.S. 290 (1967) ("Hughes"), that federal law would determine title and boundary questions[30] and would ignore the Supreme Court's mandate in *Corvallis* that state, *not* federal, law would determine such questions.[31] *Corvallis, supra*, 429 U.S. at 371.

The watchtower was completed by the United States without obtaining California's permission.

California has attempted to accommodate the plans of the United States for use of the subject land. In response, the United States has not only challenged California's title and built improvements without obtaining California's permission, but it has also disregarded basic State's rights. Consequently, this action has been necessitated.

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[30]Under federal law principles, accretion, whatever its cause, belongs to the upland owner. See *Beaver v. United States*, 350 F.2d 4 (9th Cir. 1965). There are exceptions to this conclusion. *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 323 (1973); overruled on other grounds, 429 U.S. 363, 382 (1977). Under state law the result is different. In California a distinction is drawn between accretive changes to a boundary caused by natural forces and those caused by the construction of artificial objects. For natural accretive changes, the boundary continues to move as the alluvion is deposited resulting in a benefit to the upland owner. *E.g., City of Los Angeles v. Anderson*, 206 Cal. 662, 667 (1929). Accretion caused by construction of artificial works (jetties, etc.) does not change the boundary which becomes fixed at the ordinary high-water mark at the time the artificial influence is introduced. *E.g., Carpenter v. City of Santa Monica*, 63 Cal.App.2d 772, 794 (1944).

[31]Appendix H.

## V

## ONLY THE SUPREME COURT CAN PREVENT THE ATTEMPT BY THE UNITED STATES TO RESURRECT THE BONELLI/HUGHES "RULE" THAT WOULD APPLY FEDERAL LAW TO CAUSE DEFEASANCE OF STATE SOVEREIGN LAND TITLE IN COMPLETE DISREGARD OF THE PLAIN MANDATE OF CORVALLIS AND BASIC STATE SOVEREIGN RIGHTS—THE RIGHT OF A STATE TO HAVE TITLE TO ITS SOVEREIGN LANDS DETERMINED PURSUANT TO STATE LAW

The conclusion that the Supreme Court is the proper forum to decide this case is impelled by the facts of the case and the importance of the issues to be decided. Indeed, California could well be subjected to criticism for failure to bring this case in the Supreme Court. See *United States v. Alaska, supra,* 422 U.S. at 186, fn. 2.

First, unlike many original cases sought to be brought before the Supreme Court, *e.g., Mississippi v. Arkansas,* 415 U.S. 289 (1974), this contest centers on the law to be applied to indisputable facts.

Second, the critical facts of this case and *Hughes* are virtually identical. Thus, this case presents a perfect vehicle to make the overruling of *Hughes* manifest and eliminate the manufactured uncertainty created by the United States' continued attempt to revive the recently interred *Bonelli/Hughes* "rule" to defease the State of its sovereign title. Only the Supreme Court can obviate the uncertainty generated by the claimed divergence of its rulings and prevent such defeasance.

Third, in a contest between the United States and a State, where the United States has resolved to ignore the basic sovereign attribute of a State to have the title to and boundaries of its sovereign lands decided by state law, the

Supreme Court is the appropriate forum to determine whether the choice-of-law is state or federal law and, if federal law, whether there is any need to create a nationwide federal rule rather that apply state law as the rule of decision.

**A. The Controversy Is Legal, Not Factual**

The original jurisdiction of the Supreme Court does not require the Supreme Court to entertain cases necessitating determination of complex facts, rather it is intended to encompass legal controversies presenting substantial questions of law. See *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 503-505 (1971); *United States v. State of California*, 328 F.2d 729, 735-736 (9th Cir. 1964).

In the instant case, the facts are not in controversy. *Supra*, p. 6-13. At issue is which law, state or federal, should be applied to these indisputable facts to determine the effect of the movement of the ambulatory boundary between California's sovereign tide and submerged lands and the Coast Guard Site and, predicated on that law, what is the current location and nature of that boundary.[32] That the questions here are substantial has been noted in an analogous case between the United States and a State about establishment of paramount rights in coastal lands in which it was strongly suggested that original jurisdiction should have been sought. See *United States v. Alaska, supra*, 422 U.S. at 186, fn. 2.

Since this is a coastal boundary case and the choice-of-law determination will not require lengthy or complex factual investigations by the Court, this case is appropriate

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[32]Once the choice-of-law decision is made, the boundary determination itself can be readily resolved through accepted engineering procedures. Either agreement can be reached by the parties, or a special master may be designated to recommend a resolution to the Supreme Court.

for the exercise of original jurisdiction. In addition, as explained below, significant questions of law will be decided in this case.

**B. This Case Presents Apposite Facts to Make Explicit the Demise of Hughes and Prevent Continued Attempts to Cause Defeasance of State Sovereign Titles by Operation of Federal Common Law Doctrines**

Despite the holding of *Corvallis,* again affirmed by *Wilson, et al. v. Omaha Indian Tribe, et al.,* 442 U.S. 653 (1979) ("Wilson") and by *Montana v. United States,* 101 S.Ct. 1245, 1251 (1981), the United States continues persistently to base land title and boundary claims on federal, not state law, asserting there is some continuing viability of *Hughes.* Not only does this cause considerable uncertainty, but, in this case, it is a blatant effort to cause defeasance of California's sovereign title by application of federal common law principles in disregard of the plain mandate of *Corvallis. Hughes has been overruled implicitly, if not explicitly. Corvallis, supra,* 429 U.S. at 383 (Marshall, J., dissenting). This case, in which the facts and issues are essentially identical to those in *Hughes,* a change in the boundary of coastal lands title to which is derived from the public lands of the United States, presents an especially appropriate context to end these machinations and unmistakably mark the demise of *Hughes.*

*Hughes* arose because Washington, upon its admission to the Union, adopted a constitutional provision which denied ownership of accretion to littoral property owners, a right which pre-statehood property owners claimed under the common law. *Hughes, supra,* 389 U.S. at 291. The court was asked "[w]hether federal or state law controls the ownership of land, called accretion, gradually deposited by the ocean on adjoining upland property conveyed by the United States prior to statehood." *Id.* at 290-291.

In answering that federal law determined ownership, the Court relied on *Borax, Ltd. v. Los Angeles, supra*, characterized by Justice Black as deciding ". . . that the extent of ownership under the federal grant is governed by federal law." *Hughes, supra*, 389 U.S. at 292. The *Hughes* court went on to say that *Borax* was correctly decided because:

> "[t]he rule deals with waters that lap both the lands of the State and the boundaries of the international sea. This relationship, at this particular point of the marginal sea, is too close to the vital interest of the Nation in its own boundaries to allow it to be governed by any law but the 'supreme Law of the Land'." *Id.* at 293.

Following the *Hughes* decision, the Supreme Court, again relying on *Borax*, but without citing *Hughes*, determined in *Bonelli Cattle Company v. Arizona*, 414 U.S. 313 (1973) ("Bonelli"), that, as the issue to be decided was the nature and extent of a federal "grant" of the bed of a navigable river under the Equal-Footing Doctrine and the Submerged Lands Act, Act of May 22, 1953, 67 Stat. 29, 43 U.S.C. section 1301, *et seq.*, the issue would be decided as a matter of federal law. *Bonelli, supra*, 414 U.S. at 320-321.

In 1977, however, this incipient line of reasoning[33] was repudiated by *Corvallis. Corvallis*, correctly perceiving the issue, held that *Borax* was *not* authority to apply federal law to determine the effect upon a water boundary of subsequent changes in that boundary. *Corvallis, supra*, 429 U.S. at 376-377. Once sovereign title vests, it ". . . is not sub-

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[33] *Hughes* and *Bonelli* contradicted, without explanation, a long line of Supreme Court cases which held that state law should be applied to title and boundary disputes. *E.g., Pollard's Lessee, supra*, 3 How. at 229-230; *Joy v. St. Louis*, 201 U.S. 332, 340, 343 (1906); *Arkansas v. Tennessee*, 246 U.S. 158, 175-176 (1918). *Hughes* and *Bonelli* thus radically departed from established precedent and introduced a whole new line of reasoning.

ject to later defeasance by operation of any doctrine of federal common law." *Id.* at 370-371. *Borax* requires that *only* the initial determination of the boundary between state tide and submerged lands acquired under the Equal-Footing Doctrine and federal riparian lands be decided as a matter of federal law. *Id.* at 376.

> "The expressions in *Bonelli* suggesting a more expansive role for the equal-footing doctrine are contrary to the line of cases following *Pollard's Lessee.*" *Id.* at 376-377.

The *Corvallis* Court analyzed its misconception in *Bonelli:*

> ". . . Our error, as we now see it, was to view the equal-footing doctrine enunciated in *Pollard's Lessee v. Hagan* as a basis upon which federal common law could supersede state law in the determination of land titles. *Precisely the contrary is true. . . .*" *Id.* at 371. (Emphasis added.)

Indeed, the Court recognized that the rule laid down by *Pollard's Lessee* has been considered and adopted ". . . in an unbroken line of cases which make it clear that the title thus acquired by the State [by virtue of the Equal-Footing Doctrine] is absolute so far as any federal principle of land title is concerned." *Id.* at 374; *Montana v. United States, supra,* 101 S.Ct. at 1251. Consequently, as tide and submerged lands came to California absolutely free of "any federal principle of land title," the effect of subsequent changes in the boundary between state tide and submerged lands and federally owned littoral uplands must be determined under state law.

The *Corvallis* majority relegated *Hughes* to a footnote discussion, recognizing that *Hughes* had been fatally undermined. *Corvallis, supra,* 429 U.S. at 377, fn. 6. It was specially noted that *Hughes* gave *Borax* the same expan-

sive reading as had *Bonelli* and that even in *Bonelli* the Court had expressly declined to rely on *Hughes*. *Ibid.* Apparently *Hughes* was not explicitly overruled because *Hughes* was not expressly relied on in *Bonneli* and *Hughes* dealt with "ocean-front property." *Ibid.*

The United States has grasped this slim reed to support its assertions in this case,[34] even though the logic of the majority in *Corvallis* and the explicit statement in the dissent make clear that the majority had, in fact, overruled *Hughes*. Justice Marshall, joined by Justice White, found the majority ". . . reject[ed] the reasoning on which *Hughes* is based . . ." and that it was ". . . difficult to take seriously the suggestion that the national interest in international relations justifies applying a different rule to ocean-front land grants than to other grants by the Federal Government. . . . There are no international relations implications in the ownership of land above the line of mean high tide." *Id.* at 383, n. 1 (Marshall, J., dissenting).

In this case the precise factual setting is presented to enable the Supreme Court finally to dispose of any remaining viability of *Hughes*. In *Hughes* the upland property was located on the coast, had been granted by federal patent out of the public domain and its seaward boundary had moved. In this case, the upland property, the Coast Guard Site, is located on the coast, is owned by the United States as part of the public domain and its seaward boundary has moved.

Also it is apparent that reliance on the choice-of-law rule of *Hughes*, applying federal common law to boundary and title disputes, would be contrary to a long line of Supreme Court precedents applying state law to such dis-

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[34]Exhibit H.

putes.[35] And application of the *Hughes* choice-of-law rule could cause defeasance of the State's sovereign title by operation of principles of federal common law[36] contrary to the clear holding of *Corvallis, supra,* 429 U.S. at 370-371, recently again affirmed in *Montana v. United States, supra,* 101 S.Ct. at 1251. Finally, sanction of such a rule would result in the creation of two incongruous systems for the determination of boundary disputes, one requiring application of federal law in coastal boundary cases when the United States is a disputant and the other applying state law when the United States is not concerned. The undesirability of such a result has long been recognized by this Court. *United States v. Oklahoma Gas Co.,* 318 U.S. 206, 211 (1943); *Wilson, supra,* 442 U.S. at 674.

Therefore, original jurisdiction of this case is appropriate. Not only does this case concern title to significant coastal lands, but it is virtually factually identical to *Hughes.* Only the Supreme Court can finally inter any vestigal remains of *Hughes* and confound the stubborn attempt by the United States to resurrect the *Bonelli/Hughes* "rule" to cause defeasance by application of federal common law doctrines of the absolute title received by California in its sovereign lands. But a further reason the Supreme Court should exercise original jurisdiction lies in the fact that the choice-of-law decision in controversy bears on the essential sovereignty of all the States.

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[35] *Supra,* footnote 33.

[36] *Supra,* footnote 30.

### C. In a Case Where the Essential Sovereignty of the States Vis-A-Vis the United States is Concerned, the Supreme Court Is the Only Forum to Determine the Choice-of-Law

#### 1. This Case is About the Essential Sovereignty of the States

The Tenth Amendment to the Constitution and the Equal-Footing Doctrine preserve and protect the sovereign power of each State to establish for itself a system of law for determining titles to and boundaries of lands within its borders.

The classic expression of the force of the Tenth Amendment is found in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938). In that case, Justice Brandeis, after setting forth the reasons for the decision and the background of the rule of *Swift v. Tyson*, 16 Pet. 1 (1842), wrote for the Court:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State . . . . There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State . . . . And no clause in the Constitution purports to confer such a power upon the federal courts. . . . [I]n applying the doctrine [of *Swift v. Tyson*] *this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several States*'." *Id.* at 78-80. (Emphasis added.)

Significantly, even when the rule of *Swift v. Tyson, supra,* was in vogue, "federal common law" did not govern real property disputes. An exception was made for the local law of real property because of the immovable and intraterritorial nature of real property. *Swift, supra,* 16 Pet. at 18-19. As most recently declared in *Corvallis,*

"[u]nder our federal system, property ownership is not governed by a general federal law, but rather by the laws of the several States." *Corvallis, supra,* 429 U.S. at 378.

The Equal-Footing Doctrine too defines the sovereign authority of the States to govern the title to real property within their borders. E.g., *Montana v. United States, supra,* 101 S.Ct. at 1251. Also it defines another fundamental attribute of that sovereignty, the States' title to lands beneath navigable waters.[37] Justice Stewart, dissenting in *Bonelli,* delineated the contours of the Equal-Footing Doctrine as it was to be reaffirmed by the majority of the Court three years later in *Corvallis, supra,* 479 U.S. at 381-382, as follows:

> "I think this ruling [the majority opinion in *Bonelli*] emasculates the equal-footing doctrine, under which this Court has long held 'that the new States since admitted have the same rights, sovereignty, and jurisdiction . . . as the original States possess within their respective borders'." . . .
>
> After the Revolution, the 13 Original States succeeded both to the Crown's title to the beds underlying navigable rivers and to its sovereignty over that property . . . '[T]he shores of navigable waters and the soils under the same in the original States were not granted by the Constitution to the United States, but were reserved to the several States.' . . . If the equal-footing doctrine means what it says, then the States that were later admitted to the Union must hold the same title and must exercise the same sovereignty. . . . *Just as with other real property within a State's boundaries, an element of sovereignty over*

[37]Such title is confirmed by statute. Submerged Lands Act, Act of May 22, 1953, Title II, § 3, 67 Stat. 30, 43 U.S.C. § 1311; *United States v. California, supra,* 381 U.S. at 145-146.

> *the property constituting the riverbed is the power of the State's courts to determine and apply state property rules in the resolution of conflicting claims to that property." Bonelli, supra,* 414 U.S. at 332-333 (Stewart, J., dissenting) (Citations omitted; emphasis added.).

Thus, in this case, both attributes of the essential sovereignty of the States, their sovereign land title and the right to apply their own law to determine title to that land, are in issue.

**2. As the Essential Sovereignty of the States Is Concerned When the United States, Through Assertion of Doctrines of "Federal Common Law," Seeks to Cause Defeasance of State Sovereign Land Title, the Supreme Court Is the Only Forum to Determine Whether There Is Any Overriding Federal Interest That Could Ever Require Displacement of State Law and Application of Federal Law to Determine Title to Such State Sovereign Lands**

*Corvallis,* which reaffirmed the inveterate rule that state law determines title to and boundaries of lands within a State, *Corvallis, supra,* 429 U.S. at 371, also found some limited circumstances in which federal law must apply to determine such questions. The Court very carefully delineated those narrow situations:

1. Cases about the extent of title granted by a former sovereign and required by treaty to be confirmed by the United States;

2. Interstate boundary original jurisdiction cases about the effect of change in the location of a boundary water course on the political boundary between two States;

3. Cases about the "navigational servitude possessed by the United States; and

4. Cases about the boundaries of a State's sovereign lands at the time of admission. *Id.* at 375-376.

Although none of these situations is present here, and California submits that state law must apply to determine this boundary question, it may be argued that *Corvallis* impliedly created a further exception for coastal boundary cases to the rule requiring application of state law to questions of land title or boundaries. *Id.* at 377, fn. 6. Argument may also be made that as the upland property is owned by the federal government as part of the public domain, there is some overriding federal interest requiring state law to be displaced by federal law. See *e.g., Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943); *United States v. Standard Oil Co.*, 332 U.S. 301 (1947).

Assuming *arguendo* the validity of these arguments, the Court recently explained that application of federal law is not required merely by virtue of a federal interest in the outcome.

> "Controversies . . . governed by federal law, do not inevitably require resort to uniform federal rules. [Citations omitted.] Whether to adopt state law or to fashion a nationwide federal rule is a matter of judicial policy 'dependent upon a variety of considerations always relevant to the nature of the specific governmental interests and to the effects upon them of applying state law'. [Citation omitted.]" *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 727-728 (1979); *Standard Oil Co., supra*, 322 U.S. at 310; *Wilson, supra*, 442 U.S. at 671-672.

In fact, this Court recently acknowledged that, even though a boundary controversy between a State and the United States acting as trustee for an Indian tribe was to be governed by federal law, *Wilson, supra,* 442 U.S. at 671, state law would be adopted as the federal rule of decision, *Id.* at 673-676, as "[t]his is . . . an area in which the States have substantial interest in having their own law resolve [such] controversies . . . ," *Id.* at 674.

As root principles of federalism are called into question in deciding whether to apply federal law and, if so, whether to fashion a nationwide federal rule or to adopt state law as the rule of decision in coastal boundary cases between the States and the United States, this case should be accepted for original jurisdiction. Such questions test the very sovereignty of the States—state sovereign land title and the right of the States to have such title determined by application of state, not federal, law. It is not without reason that this question has been long considered to be ". . . the most important controversy ever brought before [the Supreme Court], either as it respects the amount of property involved, or the principles on which the . . . judgment proceeds . . .", *Pollard's Lessee, supra,* 3 How. at 235 (Catron, J., dissenting).

The elemental clash between these basic tenets of federalism and assertions that could cause a defeasance of State sovereign land title by operation of doctrines of federal law presents issues of such fundamental importance that the Supreme Court should accept original jurisdiction of this case.

## CONCLUSION

California urges the Supreme Court to accept original jurisdiction of this choice-of-law controversy. Only this Court can inter completely any remaining viability of the *Bonelli/Hughes* "rule" and prevent the ill-conceived effort by the United States to cause defeasance of California sovereign land title by operation of federal law doctrines. Only the Supreme Court can correct the obstinate refusal of the United States to accept the mandate of *Corvallis* that it is a long recognized, fundamental State sovereign right, basic to the federal system, to have the title to or boundaries of its sovereign lands determined in accordance with its own non-discriminatory state laws even when the United States is a contestant.

Dated: July 6, 1981

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No. , Original

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1980

STATE OF CALIFORNIA, ex rel.
STATE LANDS COMMISSION,
*Plaintiff,*

vs.

UNITED STATES OF AMERICA,
*Defendant.*

## COMPLAINT

The State of California, ex rel. State Lands Commission, by its Attorney General George Deukmejian (herein "California"), alleges:

1. This is an action to:

a. Quiet title to certain lands located within the Northern District of California in Humboldt County, California. Such lands are referred to herein as "subject land," are particularly described in Exhibit A and are delineated on Exhibit B. Said exhibits are attached hereto and incorporated by reference herein; and

b. Determine the rights of California and the United States in and to the subject land.

2. The Supreme Court has jurisdiction over this action pursuant to Article III, Section 2, Clause 2 of the Constitution of the United States and 28 U.S.C. sections 1251(b)(2), 1346(f) and 2201.

3. Title 28, United States Code, Section 2409a and the Submerged Lands Act, 43 U.S.C. §§ 1311, et seq. provide consent to sue the United States in this action to quiet title.

## STATEMENT OF FACTS

4. By the Treaty of Guadalupe Hidalgo, 9 Stat. 922, the United States was ceded, *inter alia*, all title to tide and submerged lands held by the former sovereign Mexico, (hereinafter "sovereign lands"). These sovereign lands were held in trust for the future States that were formed from the ceded territory.

5. Upon its admission to the Union on September 9, 1850, Act of September 9, 1850, 9 Stat. 452, or as confirmed by virtue of the Submerged Lands Act, 43 U.S.C. §§ 1311 et seq., California became vested with absolute title to these sovereign lands free of any federal claim of title or federal principle of land title.

6. California holds these sovereign lands in trust for the people of California.

7. The entrance channel to Humboldt Bay, Del Norte County, California passes between two low sandy peninsulas known as the North Spit and the South Spit. By secretarial orders of December 26, 1859, and August 29, 1871, public lands of the United States on the North Spit in section 6, Township ("T") 4 North ("N"), Range ("R") 1 West ("W"), Humboldt Base and Meridian ("H.B.M.") and Lots 3 and 4, section 31, T5N, R1W, H.B.M. were reserved from sale by the United States. Such lands are collectively referred to herein as the "Coast Guard Site."

8. Commencing in 1889, the United States began construction of works extending westerly into the Pacific Ocean at the entrance channel to Humboldt Bay. Said works were comprised of two parallel rubble mound jetties, one of which extended westerly into the Pacific Ocean from the southerly point of the North Spit at the Coast Guard Site.

9. The construction of the jetty interfered with the natural regime of littoral sand transport along the western boundary of Coast Guard Site. As consequence, alluvion has been and is being deposited along said western boundary of the Coast Guard Site below the ordinary high-water mark, resulting in the formation of the subject land.

10. Except for minimal installations aiding navigation, consisting of a fog horn, the subject land is vacant and unoccupied sand dunes.

11. California is the owner of the subject land.

## FIRST COUNT

### [QUIET TITLE, 28 U.S.C. § 2409a]

12. The allegations of paragraphs 1-11, inclusive hereof, are realleged and incorporated herein by reference.

13. The United States claims a fee simple interest in the subject land.

14. The claim of defendant United States is without any right whatever, and defendant United States has no right, title, or interest in the subject land.

## COUNT TWO

### [DECLARATORY RELIEF, 28 U.S.C. § 2201]

15. The allegations of paragraphs 1-11, inclusive, hereof are realleged and incorporated by reference herein.

16. There is an actual, substantive controversy between California and the United States in that:

a. There is a controversy concerning the ownership and rights in and to the subject land; and

b. There is a controversy concerning whether the United States has a duty to recognize the interest of California in and to the subject land.

## PRAYER

WHEREFORE, California prays for the following relief:

1. That judgment be entered quieting the title of the State of California in and to the subject land and declaring that the defendant United States has no right, title or interest in or to said land and that said defendant United States be forever barred from asserting any claim whatsoever in the subject land or any part thereof adverse to the State of California.

2. For an order compelling the United States to recognize California's interest in the subject land and to cause to be executed a quitclaim deed, on behalf of the United States, conveying any and all claimed right, title, or interest of the United States in or to the subject land.

3. For an order setting forth the respective rights and interests of the parties in and to the subject land and the obligation of the United States to recognize the interest of California in and to the subject land.

4. For California's costs of suit herein.

5. For such further and other relief to be granted as the Court may deem just and proper.

Dated: July 6, 1981

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**(Exhibits Follow)**